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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,516	11/10/2000	Gerald R. Koefeldt	RPC-0485-PUS	5124

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 01/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/710,516

Applicant(s)

Koe felda et al.

Examiner

Castellano

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 11/30/01
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-24 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 1 is indefinite because it is inconsistent to state that the standoff portions are intended for maintaining the corresponding beverage container in a spaced relationship from the divider members when the standoff portions are considered to be included as part of the divider members.

4. Claim 20 recites the limitation "the compartment" in line 12. There is insufficient antecedent basis for this limitation in the claim.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 7-15, 17-20, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gale.

Gale discloses a crate comprising a unitary bottom panel having an upper surface, the bottom panel includes flaps (21, 22) and inserts (81, 82) attached together in a unitary

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construction, the upper surface of the bottom panel is defined by the bottoms of major wells (91), side walls (12, 13, 16, 17) form a unitary construction with the bottom panel, longitudinal and transverse dividers are formed by areas of the insert which are located outside of the major wells (91) and the upper portion of the inner side wall surfaces of the wells as best shown in Fig. 4 and 5, the dividers are attached to the upper surface of the bottom panel to form a unitary construction with the bottom panel, the standoffs are formed by the lower portion of the inner side wall surfaces of the major wells (91) which engage the lower portions of bottles (78), a pivoting lid (26 or 28) includes a recess (97) for engaging a bottle cap.

7. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Apps ('814).

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, 7, 8, 10-13, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Hammett ('836) or Hepp.

Gale discloses the invention except for the standoffs being attached to a divider. Hammett and Hepp teach dividers with standoffs attached thereto. It would have been obvious to add the divider with attached standoffs in order to reinforce the standoffs and space the divider from the bottles to prevent label damage.

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10. Claims 1, 7, 9, 10-13, 18, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Poutainen.

Gale discloses the invention except for the standoffs being attached to a divider.

Poutainen teaches dividers with standoffs (11) attached thereto and these standoff have a height less than that of the dividers. It would have been obvious to add the divider with attached standoffs in order to reinforce the standoffs and space the divider from the bottles to prevent label damage.

11. Claims 5, 6, 15, 16, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Apps.

The combination discloses the invention except for the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. Apps teaches the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid. It would have been obvious to add the projection receiving portion on the underside of the bottom and the projection on the upper surface of the lid in order to stack the crates with more stability since this arrangement prevents slide.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gale in view of Jamison.

Gale discloses the invention except for the lid lock. Jamison teaches a lid lock. It would have been obvious to lock the lid to prevent unauthorized access to the contents of the crate.

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13. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.


14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

January 10, 2002